The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMNI INNOVATIONS, LLC, a Washington limited liability company; and JAMES S. GORDON JR. Plaintiffs, v. SMARTBARGAINS.COM, LP, a Delaware Limited Partnership; Defendant.	NO. CV06-1129JCC **ANSWER TO FIRST AMENDED COMPLAINT**

Defendant SmartBargains.com, LP ("Defendant") answers and asserts affirmative defenses to Plaintiffs' First Amended Complaint (the "FAC"), as follows:

I. ANSWER

1. Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the allegations in Paragraph 1 of Plaintiffs' FAC, and therefore DENIES the same.

2. Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the allegations in Paragraph 2 of Plaintiffs' FAC, and therefore DENIES the same.

3. Defendant ADMITS that Defendant is a Delaware limited partnership and has its principal place of business in Boston, Massachusetts. Defendant DENIES all other

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allegations contained in Paragraph 3 of Plaintiffs' FAC.

4. Defendant provides the statutes cited in Paragraph 4 of Plaintiffs' FAC speak for themselves, and Plaintiffs' interpretation of those statutes is not a factual allegation which must be admitted or denied. Defendant DENIES all allegations contained in Paragraph 4 of Plaintiffs' FAC.

5. Defendant provides the statute cited in Paragraph 5 of Plaintiffs' FAC speaks for itself, and Plaintiffs' interpretation of that statute is not a factual allegation which must be admitted or denied. Defendant DENIES all allegations contained in Paragraph 5 of Plaintiffs' FAC.

6. Defendant provides the statute cited in Paragraph 6 of Plaintiffs' FAC speaks for itself, and Plaintiffs' interpretation of that statute is not a factual allegation which must be admitted or denied. Defendant DENIES all allegations contained in Paragraph 6 of Plaintiffs' FAC.

7. Defendant DENIES Plaintiff James S. Gordon, Jr. ("Gordon") is an interactive computer service pursuant to the statutes cited in Plaintiffs' FAC or any other definition of "interactive computer service". Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the remaining allegations in Paragraph 8 of Plaintiffs' FAC, and therefore DENIES the same.

8. Defendant DENIES Plaintiff Omni Innovations, LLC ("Omni") is an interactive computer service pursuant to the statutes cited in Plaintiffs' FAC or any other definition of "interactive computer service". Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the remaining allegations in Paragraph 8 of Plaintiffs' FAC, and therefore DENIES the same.

9. Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the allegations in Paragraph 9 of Plaintiffs' FAC, and therefore DENIES the same.

10. Defendant DENIES all allegations contained in Paragraph 10 of Plaintiffs' FAC.

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11. Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the allegations in Paragraph 11 of Plaintiffs' FAC, and therefore DENIES the same.

12. Defendant is without knowledge and information sufficient to form a belief with respect to the veracity of the allegations in Paragraph 12 of Plaintiffs' FAC, and therefore DENIES the same.

13. Defendant DENIES all allegations contained in Paragraph 13 of Plaintiffs' FAC.

14. Defendant DENIES all allegations contained in Paragraph 14 of Plaintiffs' FAC.

15. Defendant DENIES all allegations contained in Paragraph 15 of Plaintiffs' FAC.

16. Defendant DENIES all allegations contained in Paragraph 16 of Plaintiffs' FAC.

17. Defendant DENIES all allegations contained in Paragraph 17 of Plaintiffs' FAC.

18. Defendant DENIES all allegations contained in Paragraph 18 of Plaintiffs' FAC.

19. Defendant DENIES all allegations contained in Paragraph 19 of Plaintiffs' FAC.

20. Defendant DENIES all allegations contained in Paragraph 20 of Plaintiffs' FAC.

21. Defendant DENIES all allegations contained in Paragraph 21 of Plaintiffs' FAC.

22. Defendant provides the section of Plaintiffs' FAC titled "Request for Relief" does not contain factual allegations which must be admitted or denied. Defendant DENIES all allegations contained in the section of Plaintiffs' FAC titled "Request for Relief", and further DENIES Plaintiffs are entitled to any of their requested relief.

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II. AFFIRMATIVE DEFENSES

Without admitting any of the allegations described in Plaintiffs' FAC, Defendant raises the following affirmative defenses:

1.1. Plaintiffs are barred from obtaining any relief sought in the FAC because the FAC fails to state any claim upon which relief may be granted.

1.2. Plaintiffs are barred from obtaining any relief because Plaintiffs failed to mitigate their alleged damages, if any.

1.3. Plaintiffs are barred from obtaining any relief because Plaintiffs subscribed to receive commercial emails on which Plaintiffs base their FAC.

1.4. Plaintiffs are barred from obtaining any relief sought in the FAC by reason of their own unclean hands.

1.5. Plaintiffs are barred from obtaining any relief sought in the FAC because Plaintiffs failed to unsubscribe utilizing unsubscribe links in the emails or other means reasonably calculated to communicate to Defendant an intent to unsubscribe.

1.6. Plaintiffs waived their claims.

1.7. Plaintiffs are not entitled to damages from Defendant where Plaintiffs have already been compensated by another entity for alleged damages allegedly caused by Defendant.

1.8. Plaintiffs consented to all actions they complain about in their FAC, and therefore Plaintiffs are not entitled to any relief.

1.9. Plaintiffs ratified and approved all actions they complain about in their FAC, and therefore Plaintiffs are not entitled to any relief.

1.10. Plaintiffs' claims, and each of them, are barred by the doctrine of estoppel.

1.11. Plaintiffs' claims, and each of them, are barred by the doctrine of laches.

1.12. The damages alleged in Plaintiffs' FAC, if any, were not caused by Defendant; rather, any damages suffered by Plaintiffs were caused by one or more third parties whose activities were not approved, ratified, or controlled by Defendant.

1.13. Plaintiffs have failed to join one or more necessary and indispensable

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parties.

1.14. Defendant established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent the violations alleged in the FAC.

1.15. Defendant made commercially reasonable efforts to maintain compliance with their practices and procedures designed to effectively prevent the violations alleged in the FAC.

1.16. To the extent any action by Defendant violates CAN-SPAM, Defendant acted without actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

III. PRAYER FOR RELIEF

WHEREFORE, Defendant requests that this Court:

1. DISMISS Plaintiffs' FAC against Defendant alleged herein;

2. DENY Plaintiffs the relief they seek;

3. GRANT Defendant its reasonable costs and attorneys' fees incurred in defending against Plaintiff's FAC; and

4. GRANT such other and further relief to Defendant as the Court shall deem just and equitable.

DATED this 22nd day of February, 2007.

Respectfully Submitted,

NEWMAN & NEWMAN,
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By: ______________________________

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